

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No. EB-09-SE-155
	)	
Futurewei Technologies, Inc. d/b/a Huawei	)	Acct. No. 201032100035
	)	
Technologies (USA)	)	FRN No. 0016162539

**ORDER**

**Adopted:** July 9, 2010

**Released:** July 12, 2010

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Futurewei Technologies, Inc. d/b/a Huawei Technologies (USA) (“Huawei”). The Consent Decree terminates an investigation by the Bureau against Huawei for possible violations of Section 20.19(i) of the Commission’s Rules (“Rules”),<sup>1</sup> regarding compliance with the Commission’s regulations pertaining to hearing aid compatibility for wireless handsets.

2. The Bureau and Huawei have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Huawei possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> and sections 0.111 and 0.311 of the Commission’s Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

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<sup>1</sup> 47 C.F.R. § 20.19(i).

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Jiangao Cui, Senior Vice President, Futurewei Technologies Inc., dba Huawei Technologies (USA), and counsel for Huawei, Thomas Navin, Esq., Wiley Rein LLP, 1776 K Street, NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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**CONSENT DECREE**

The Enforcement Bureau of the Federal Communications Commission (“Bureau”) and Futurewei Technologies, Inc. d/b/a Huawei Technologies (USA) (“Huawei”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation of Huawei for possible violations of Section 20.19(i) of the Commission’s Rules (“Rules”),<sup>1</sup> regarding compliance with the Commission’s regulations pertaining to hearing aid compatibility for wireless handsets.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended 47 U.S.C. § 151 *et seq.*
  - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) “Compliance Plan” means the compliance obligations and compliance program described in this Consent Decree at Paragraph 8.
  - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (g) “Huawei” means Futurewei Technologies, Inc. d/b/a Huawei Technologies (USA) and its subsidiaries as well as its predecessors-in-interest and successors-in-interest.
  - (h) “Investigation” means the investigation commenced by the Bureau’s September 30, 2009, letter of inquiry (“LOI”)<sup>2</sup> to Huawei regarding possible violations of Sections 20.19(h) and (i) of the Rules.
  - (i) “Parties” means Huawei and the Bureau, and each a “Party”.

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<sup>1</sup> 47 C.F.R. § 20.19(i).

<sup>2</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Huawei Technologies (September 30, 2009) (“LOI”).

- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.<sup>3</sup> In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.<sup>4</sup> Pursuant to Section 20.19(i) of the Rules,<sup>5</sup> manufacturers of certain wireless handsets are subject to regulations specifying compliance with the Commission’s requirements for hearing aid compatibility. This regulation includes provisions addressing compliance with technical requirements and reporting obligations.

3. On September 30, 2009, the Bureau issued an LOI to Huawei.<sup>6</sup> The LOI directed Huawei to submit a sworn written response to a series of questions relating to compliance with the hearing aid compatibility regulations pertaining to certain wireless handsets. Huawei responded to the LOI on November 13, 2009.<sup>7</sup>

## III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** Huawei agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

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<sup>3</sup> The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

<sup>4</sup> See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3418-24 ¶¶ 34-46 (2008) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

<sup>5</sup> 47 C.F.R. § 20.19(i).

<sup>6</sup> See LOI.

<sup>7</sup> See Letter from Charlie W. Chen, Senior Vice-President, Huawei, to Marlene H. Dortch, Secretary, Federal Communications Commission (November 11, 2009) (“LOI Response”). The LOI response was filed November 13, 2009. Huawei submitted its Hearing Aid Compatibility reports for 2008 and 2009 on the same date.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, Huawei agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Huawei concerning the matters that were the subject of the investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Huawei with respect to Huawei's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Huawei agrees to (i) create within sixty (60) days after the Effective Date a Compliance Plan related to future compliance with the Act, the Commission's Rules and the Commission's Orders, and (ii) establish operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 20.19 of the Rules. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** Huawei will designate a senior corporate manager ("Compliance Officer") who is responsible for administering the Compliance Plan.
- (b) **Training.** Within ninety (90) days after the Effective Date, Huawei will provide training and materials concerning Section 20.19 of the Rules pertaining to the hearing aid compatibility requirements for wireless handsets and explaining the requirements of the Consent Decree to those of its management employees who are involved directly in the development and marketing of wireless handsets imported, marketed, and sold by Huawei in the United States. Huawei will also provide training and materials to any new management employees who are directly involved in the development and marketing of wireless handsets imported, marketed, and sold by Huawei in the United States within ninety (90) days of their employment.
- (c) **Compliance Reports.** Huawei will file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Huawei, stating that the Compliance Officer has personal knowledge that Huawei (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 20.19 of the Rules, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Huawei, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that Huawei has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All Compliance Reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications

Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Kevin.Pittman@fcc.gov and Kathy.Berthot@fcc.gov.

- (d) **Termination Date.** Unless stated otherwise, the requirements of this Paragraph 8 of the Consent Decree will expire twenty-four (24) months after the Effective Date.

9. **Voluntary Contribution.** Huawei agrees that it will make a voluntary contribution to the United States Treasury in the amount of nine thousand dollars (\$9,000). The payment will be made within thirty (30) days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Huawei will also send electronic notification to Kevin.Pittman@fcc.gov and Kathy.Berthot@fcc.gov on the date said payment is made.

10. **Waivers.** Huawei waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. Huawei shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Huawei nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Huawei shall waive any statutory right to a trial *de novo*. Huawei hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Huawei does not expressly consent) that provision will be superseded by such Commission Rule or Order.

13. **Successors and Assigns.** Huawei agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the matters set forth herein. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission’s Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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P. Michele Ellison  
Chief, Enforcement Bureau

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Date

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Jiangao Cui  
Senior Vice President  
Futurewei Technologies, Inc. d/b/a Huawei  
Technologies (USA)

\_\_\_\_\_  
Date